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An Answer Addressed to Lord Palmerston by Provost  
& Scholars of King's College, Cambridge - 1854.

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AN ANSWER  
TO  
THE REMARKS AND RECOMMENDATIONS  
OF  
**Her Majesty's Commissioners**  
FOR INQUIRING INTO THE STATE, &c. OF THE  
UNIVERSITY OF CAMBRIDGE,  
SO FAR AS THEY RELATE TO  
**King's College,**  
ADDRESSED  
TO THE RIGHT HONOURABLE  
LORD VISCOUNT PALMERSTON, G.C.B., M.P.,  
*Her Majesty's Secretary of State for the Home Department,*  
BY THE  
PROVOST AND SCHOLARS  
OF  
KING'S COLLEGE, CAMBRIDGE.

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1854.

Edgc 3959.12.55



*Charles William Eliot fund*

TO THE RIGHT HONOURABLE  
LORD VISCOUNT PALMERSTON, G.C.B., M.P.,  
HER MAJESTY'S SECRETARY OF STATE FOR THE  
HOME DEPARTMENT.

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THE Provost and Scholars of King's College in the University of Cambridge, in compliance with a wish expressed by your Lordship's predecessor in office, to the Vice-Chancellor and Authorities of this University, to receive any observations which they might have to make upon the Recommendations contained in the Report of Her Majesty's Commissioners appointed to inquire into the State, Discipline, Studies, and Revenues of the University and Colleges of Cambridge, request your Lordship to receive from them the following Statement.

I. The Provost and Scholars of King's College feel it incumbent upon them to state "in limine," that by the Statutes of their College, every Scholar on his admission to his years of probation in the College is directed to swear, and does swear, that "he will not accept, or consent to, or obey, or use any other Statutes, Ordinances, &c. &c., than those ordained for the College by King Henry VI."



*(The original words of the Statute are to be found in page 495 of Volume II. of "Documents relating to the University and Colleges of Cambridge," published by direction of the Commissioners appointed by the Queen to inquire into the State, Discipline, &c., of the said University and Colleges.)*

Also, that "he will faithfully obey those Statutes, or submit to the penalties ordained in them for disobedience." (*Documents, &c.*, Vol. II. p. 496.)

II. The Provost and Scholars of King's College state also, that by the Statutes of their College, every Fellow on his admission after his years of probation, is directed to swear, and does swear, amongst other things, to the same effect, and very nearly in the same words, as he did upon his admission into the College as a Scholar: only an injunction to resist and hinder by all possible means the introduction of any other Statutes, &c., is added. (*Documents, &c.*, Vol. II. p. 500.)

III. Also, that "he will maintain the Statutes of both Colleges, King's College in Cambridge, and that of the Blessed Virgin Mary of Eton, and secure the observance of them by others, and, in case of violation of them by himself, undergo the penalty attached to the infringement." (*Documents, &c.*, Vol. II. p. 499.)

IV. The Provost also by the Statutes of the College takes a similar oath in words equally stringent. (*Documents, &c.*, Vol. II. p. 512.)

V. The Provost and Scholars of King's College state also, that by a provision in the Statutes of their College, the Provost, Fellows, and Scholars are for-

bidden to make, or accept, or use any other Statutes than those given to the College by King Henry VI. (*Documents, &c.*, Vol. II. p. 609.)

VI. Also, that in the conclusion of his Statutes "their Royal Founder has expressly forbidden, that after his death any of his Heirs or Successors on the throne of England, or the Bishop of Lincoln, or any Archbishop or Bishop shall make any new Statutes for his College, or enact anything contrary to those he left, or, under any pretext, dispense with any of them; and he again strictly enjoins the Members of his College not to accept, or procure, or use any other Statutes than those that should be in force at his decease." (*Documents, &c.*, Vol. II. p. 618.)

VII. The Provost and Scholars of King's College endeavoured by answers sent to the Queries of Her Majesty's Commissioners, especially in their unreserved Statement regarding the revenues of their College, to shew their compliance with the wishes of Her Majesty's Commissioners, as far as it was considered competent for them according to their Statutes.

They are fully sensible of the advantage afforded them and other Members of the University, by which they have been enabled to exercise their discretion, both in regard of answering the questions propounded to them, and in the method by which any answers they might deem it right to send, were to be conveyed; but they now, with all respect and duty, say that, while they have had no power to change the Statutes of their Founder, and have been forbidden even to consent to

any change of them, the only course hitherto open to the College has been such a general obedience as circumstances would allow. And, while they are persuaded that no undue attempt, such as their Founder has provided against, will be made to impose any new Statutes upon the College, they trust that an opportunity will be given them of fully considering any proposal to alter their Statutes even by legislative authority, with a view to ensure that such alterations may not be contrary to the intent of their Founder, or in any way prejudicial to the good estate of the College.

VIII. The Provost and Scholars of King's College would here stop, being satisfied that they have replied to the request communicated to them by Her Majesty's Secretary of State for the Home Department, in the way apparently most consistent with the restrictions of their Statutes. But a perusal of the Report of Her Majesty's Commissioners for the University of Cambridge, so far as it relates to King's College, has induced them to add these following Observations: for they collect from that portion of the Report, that Her Majesty's Commissioners state that their Statutes are not observed either according to the letter or the spirit: and that it is thence deduced that they ought not reasonably to oppose any change of the constitution given in those Statutes so disregarded by them.

IX. The Provost and Scholars of King's College do not regard this Statement as a personal accusation particularly made against them, that their Statutes are not fulfilled, nor capable of being fulfilled; for it is fre-

quently admitted by Her Majesty's Commissioners in their Report, that many of the precise regulations of early Founders, and of King Henry VI. more especially, cannot practically be enforced, nor complied with in their strictly literal sense.

They also observe with pleasure an admission in p. 173 of the Report, that the relative rights of the various Members of their Body have been preserved. In illustration of this testimony, the Provost and Scholars of King's College think it due to the memory of their predecessors to point out the striking fact, that for upwards of two centuries they cannot be charged with any infraction of their Statutes for the benefit of any individual Members, or in favour of any part of the Fellows to the disadvantage of the others.

They submit that the maintenance of this purity during so many generations, when the College was exempt from any interference from without, should be duly weighed by those who are now passing judgement on so ancient an Institution.

X. The Provost and Scholars of King's College conceive that the several more important particulars of their Statutes, which are stated by Her Majesty's Commissioners not to be observed, are such as concern,

1. The class admitted as Scholars at Eton, and; from Eton, as Scholars for probation at King's College, and, after their probation there, as Fellows. For it is stated that such are not "*Pauperes et Indigentes Scholares*," according to the words and meaning of the

Founder, but are unduly superior both in wealth and social position.

2. The instruction, which is not according to the Statutes; no Fellows being appointed as Teachers, Bachelors not being instructed by Masters of Arts, nor Masters of Arts by Doctors in Theology; the Undergraduates of the College also depending on extraneous instruction for the ordinary preparation for their first Degree; though in the cases of Civil and Canon Law alone may teachers be statutably obtained from beyond the College.

3. The entering into Holy Orders by the full number of Fellows capable of taking those Orders; none of the Fellows of the College entering into those Orders, unless they be inclined.

4. The higher Degrees in Theology, Law, and Medicine, which are not compulsorily taken, and the Studies of those Sciences and of Astronomy, which are not compulsorily pursued by the number of the Fellows statutably required to take such Degrees and pursue such Studies.

5. The Residence of the Fellows in the College; the same not being enforced, nor kept, according to the Statutes, but relaxed by the Visitor without apparent authority.

6. The prohibition of payment to any Fellow for doing Clerical Duty in any other Church than that of the College.

7. The caution against change or suppression in

the numbers of any part of the Foundation; the Stipendiary Chaplains having been reduced from ten to one.

8. Many other Statutable Enactments in minute details; the same being disregarded in King's College, as in several other Colleges, though solemnly enjoined by the most sacred sanctions, and their modification in the smallest degree prohibited under the most awful penalties. (See *Cambridge Report*, pp. 173—6.)

XI. The Provost and Scholars of King's College, before they observe upon the particulars above classed into eight heads, admit that attempts by Statute to render a body politic or corporate unchangeable, must be vain; for the lapse of time affects all political institutions as surely as it affects and destroys the natural body. The Provost and Scholars of King's College therefore suppose that for this reason, amongst others, there have existed from early times, in the law of this country, certain rules regarding the exposition of Statutes and legal documents, which, unless expounded according to those rules, would become unfit for their purposes, and the Societies intended to be subjected to and regulated by them, being without applicable laws, would cease to exist, or would exist, if it were possible, in a lawless state.

XII. The Provost and Scholars of King's College conceive that the Courts of Law in this country have always regarded those purposes, the mischiefs to be prevented or remedied, and the objects to be attained; and have adopted those Rules just mentioned, though their

constitutional office is only to declare the law, a co-existing Legislature being at all times at hand to enact new laws, where such as are already enacted are inadequate.

Perhaps of all those Rules none is of more important and general application than that which requires the whole document to be considered, all its provisions reconciled, if possible, and, if from original and inherent oversight this cannot be done, then the principal object of the Grantor, Testator, or Founder, as the case may be, is to be preferred; while the secondary objects are, either so modified as to assist the principal, or, if they be contrary or opposed to it, disregarded.

XIII. The Provost and Scholars of King's College apprehend that Visitors are justified in following those Rules, and in interpreting the Statutes of their Founders with reference to those reasons, by which the Courts of Law are swayed; not the less because after a Founder's death, where alteration is forbidden, no coexistent power of legislature is left, from whence new enactments may proceed, renewing what has become imperfect, and restoring what has failed in course of time.

XIV. The Provost and Scholars of King's College observe that the Legislature has in several instances excepted Foundations with special Visitors from enquiries and reforms, adopted in cases where the absence of a Visitor rendered extraneous assistance necessary. By the Statute 43 Eliz. chap. 4, a tribunal is constituted, by which Decrees regarding certain Charities, without Visitorial Superintendence, are to be so modelled, as "shall be

thought to stand with equity and good conscience, according to the true intent and meaning of the Donors and Founders" of such Charities. From this Statute the Colleges of the Universities, and certain other Foundations, having special Visitors appointed by their Founders, are excepted. It is, therefore, contended that the ground of such exception is, because Visitors of Colleges had that power of interpretation, "standing with equity and good conscience according to the true intent and meaning of the Founders," by the nature of their office, which the Legislature in other cases conferred by Statute on the Tribunal, which it had constituted.

XV. It is true that the words of the Founder of King's College are precise, which forbid any interpretation of his Statutes, "*nisi juxta planum sensum, communem intellectum et expositionem grammaticalem et literalem magis et aptius ad casum seu prætensum dubium de quo agitur applaudentem,*" and which require that the interpretation be not repugnant "*sano et plano intellectui.*" But these words may be with reason thought not to forbid the application of those Rules already mentioned; nor of that "equity and good conscience" which are inherent in a Visitor's office. For example, the Visitor of King's College is to be "*Collegii favorabilis Conservator specialisque Protector.*" Suppose that a strictly verbal construction of a certain provision would greatly prejudice, or perhaps even, for purposes of education, destroy the College, if the Visitor were to adopt that construction, he would not only neg-



lect the principal duty of his office, the principal object of his Founder, viz. the prosperity of the Society; he would not only decide against "equity and good conscience, according to the true intent and meaning of his Founder," but he would omit all notice of those important words of "preservation and protection" just mentioned. He must decide, therefore, by equity rather than by the letter, if his decision is to reconcile the passages and be agreeable "*plano et sano intellectui*."

So again King's College is founded amongst other things "*ad liberalium artium scientiarumque augmentum*." Specific mention is made of some authors which are to be studied, some perhaps obsolete, some not now existing, some now proved erroneous. Here, again, the Visitor will decide with that same "equity and good conscience," and not only "according to the true intent," but even according to the words "of his Founder," if he shall hold that the Studies of the Society ought to be those which Time has augmented and improved, and Science invented or corrected.

XVI. The Provost and Scholars of King's College suppose that where the Sovereign visits by the Lord Chancellor, or where a Visitor is assisted by legal advice, or if the Courts of Law examined the Statutes of Colleges, or the Decisions of Visitors, these Rules of Interpretation would be regarded. One instance may be referred to where the House of Lords approved of an allowance of five months for the decision of presentation to a College Living, though the Statutes of the College

required the decision of the College to be made within one month. (See Bp. Monk's *Life of Bentley*, Vol. II. p. 332, ed. 8vo.)

In the case of Queens' College, reported in Jacob's *Reports*, at p. 37, Lord Eldon, representing the Crown as Visitor, observes, on the fact of the President and Fellows having raised, in 1804, the disqualification for holding a Fellowship from £10 to £120 per annum; "It is a different question what a Visitor may do on a fair and reasonable construction of the College Statutes, and what he may permit with respect to points on which the law of the land attaches. I do not apprehend what has been done on this head by the Master and the Fellows would be likely to be disturbed by any Visitor."

XVII. The adoption of these Rules for the Interpretation of College Statutes may, as is said by Her Majesty's Commissioners for the University of Oxford, be "inconvenient and inadequate." (*Oxford Report*, p. 161.) Each rule may have been the subject of contention till litigation had settled it; and, when so settled, it may be clear only to practised lawyers. But the Provost and Scholars of King's College are not at liberty to question the decisions of their Visitor, nor to argue whether the rules of interpretation adopted by him are correct. It may be that a more satisfactory state of things might be contrived, but the question on which the Members of King's College feel here bound to enter is, whether the Law in regard to Interpretation of Statutes be as they have supposed it. If the Law be so, it is contended that in several

instances a practice not apparently in conformity with the words of a Statute may really be obedience to approved rules imposed by Visitorial Authority, to which the power of interpretation properly belongs.

XVIII. The Provost and Scholars of King's College submit a second general observation on the very great alteration virtually made in their Statutes by the Legislature at the time of the Reformation, a change involving, as they conceive, greater consequences than Her Majesty's Commissioners seem to allow. (See *Cambridge Report*, pp. 173, 4.) For many provisions of their Statutes have been rendered illegal, some rendered inconvenient and improper, and several so modified by that event, that one main object of the Founder regarding Divine Service according to his views of Religion cannot be consulted. The intricacies and difficulties, perhaps it may be truly said, the contradictions, which owe their existence to the Acts of the Legislature at that time, must be explained or reconciled by Collegiate and Visitorial discretion, but are not justly to be charged against any.

XIX. This view of the case may be well illustrated by using a comment of Lord Coke's upon *Lyttleton*, § 351, cited by Mr Dampier in his legal statement, pp. 4, 5, appended to the Report of the Oxford Commissioners.

"*Lyttleton*, § 135 &c. of his Tenures, having noticed that Tenants in Frankalmoigne and by Divine Service, must say Prayers generally, or some prayers in particular, as their grantors may have directed, Lord Coke thus comments:—'Since *Lyttleton* wrote, the Li-

turgie or Book of Common Prayer and of celebrating Divine Service is altered. This alteration notwithstanding, yet the Tenure in Frankalmoigne remaineth, and such Prayers and Divine Service shall be said and celebrated, as now is authorized, yea, though the tenure be in particular, as *Lyttleton* hereafter saith, viz. *A Chaunter un messe, &c., ou a Chaunter un placebo et dirige*, yet if the Tenant saith the prayers now authorized, it sufficeth. And as *Lyttleton* hath said before in the case of Socage, the changing of one kind of temporal services into other temporal services altereth neither the name nor the effect of the tenure : so the changing of spiritual services into other spiritual services altereth neither the name nor the effect of tenure : and albeit the Tenure in Frankalmoigne is now reduced to a certainty contained in the Book of Common Prayer, yet seeing the original Tenure was in Frankalmoigne, and the change is with general consent by authority of Parliament, whereunto every man is a party, the Tenure remains as it was before.’”

XX. The Provost and Scholars of King’s College submit another general observation, arising from the peculiar situation of their College in regard of their Statutes, and the subjects of their Statutes; viz. the Buildings and Property. For while the Founder of King’s College had given his Colleges a perfect body of Statutes, virtually those of William of Wykeham, applicable to and only practicable in a perfect foundation, such as those of that great Founder, he left his College at Cambridge with an unfinished Chapel, and a few

apartments designed for the attendants of the College. The Civil Wars of the rival Houses of York and Lancaster, the violent death of the Founder himself, the triumph of the house of York, not only caused this imperfection, but left the College almost without funds for its daily support. Edward IV. seriously impoverished the College, and even went far to dissolve it. Henry VII., in whose reign the College petitioned Parliament on account of its straitened resources, contributed to the completion of the Chapel. But the habitable buildings remained in their former state. Henry VIII. by colour of exchanges prejudiced the Collegiate Funds. Then followed the troubles preceding and accompanying the Reformation, in which King's College took an active and leading part. Hence the College appears to have enjoyed but little repose and no certain income, habitation, or collegiate condition for a century immediately following its Foundation. Another century passed before any surplus income existed. A third century passed before the College was able, though assisted by contributions from friends, to add to the original Buildings; and only within the last 25 years has it, at its own expense, been able to withdraw its junior Members from those original Buildings, already mentioned, into a fabric suited as well to the wants of a Collegiate Body, as to the requirements of modern habits.

XXI. The Provost and Scholars of King's College submit that, where a Founder has been unable to provide opportunity and ability for his Society to comply with his regulations, practices not contemplated by the

Founder may naturally have arisen, and that the Society cannot justly be charged with violation of Statute on account of omission of residence, or of imperfect numbers, or of matters of regulation or discipline, depending on sufficient Buildings and Funds. The possibility of fulfilling in such particulars the Statutes of Henry VI. did not exist till long after time and the law had rendered much of those Statutes improper, much impossible, and much illegal ; and it has only been called into existence in a great degree by recent exertions, and through supplies not derived directly from the Founder. They would remark, that so necessary has the completion of sufficient buildings been held for the perfect *status* of a College, that on the recent foundation of Downing College, the two Archbishops and the Masters of St John's and Clare Hall, with the approbation of Lord Eldon, the then Lord Chancellor, caused an express provision to be inserted in the Charter, deferring the appointment of the full number of the Fellows of the College, until after the erection of the necessary buildings for the same. (*Downing College Case*, 2 *Mylne and Craig's Reports*, 668.)

XXII. These general observations will be found more or less applicable to the particular subjects on which the Provost and Scholars of King's College now enter.

The first of which regards the Class of Scholars admitted as such, and as Fellows, to the benefits of Eton and King's Colleges.

XXIII. The Provost and Scholars of King's College might ask for the reasons and proofs, which have in-

fluenced Her Majesty's Commissioners in their Report on this subject. For the Electors of the Scholars at Eton have been accustomed to regard the domestic circumstances of the boys, even when their literary merit was not, as at present, considered and compared. It is not supposed that Her Majesty's Commissioners lay any stress on the precise sums of "five marks" and "100 shillings;" for the values of money can be compared only by reference to exchange: for instance, by the quantity of necessary and ordinary food and labour, which it will procure at different times, and in different places.

XXIV. That quantity in the 15th and in this century must be compared with one another.

But, though Her Majesty's Commissioners appear to think the comparison of the value of money at different and distant times can be made, the Provost and Scholars of King's College venture to doubt whether such comparison can easily be made with precision: for in early, even in recent, times prices of the same article have been found to vary greatly according to the facility of transport; and, while ordinary food was plentiful in one part, in another there might be scarcity and consequent dearth. This has been the case in this country, and still is in some degree, in regard of Coal. The increasing facilities of transport are now operating in the equalisation of prices, which lately were notoriously unequal. This point may also be aptly illustrated by a consideration of the price of Wool, which in the early times of our history was taxed not according to quantity, but *value*. Commissioners for this purpose were sent into every county

to fix the sum to be therein raised by the tax. These Commissioners reported on the prices of Wool in each county. The Commission Records exist in the Exchequer, and shew how different in those times was the price of that necessary and staple product at different places.

XXV. The criterion supposed to be afforded by the value of ordinary labour is more unsatisfactory still; for at a very recent period its value in one part of this Country was double that in another part.

A Table shewing the Rate of Agricultural Wages in 1850, in the Northern and Southern Counties of England, gave the

<i>Average of Wages in all the Northern Counties</i>				11s. 6d.
-	-	-	-	<i>Southern</i> . . . 8s. 5d.

XXVI. It is clear, however, that in the fifteenth century the sum of "five marks" was not inconsiderable; for, notwithstanding the discovery of America, a Fellow of Trinity College, in the middle of the sixteenth century, received only £10 a year, "including all his allowances." (See *Cambridge Report*, p. 48.) It is true, as observed by Her Majesty's Commissioners, that the Statutes of King's College suppose the case of a Fellow being unable to pay the expenses of his Degrees. (*Documents, &c.*, Vol. II. p. 545). But this is an excepted case; and it might be as often true in these, as in earlier times, if the College Dividends were withdrawn. The same Statute supposes that the poor Student may have rich friends, and means of his own; and another Statute, (*Documents, &c.*, Vol. II. p. 573), fining a Fellow 100 shillings, also assumes that the Fellow him-



self may have money; and a third Statute, (*Documents, &c.*, Vol. II. p. 562), making mention of “*hæreditas*” and “*patrimonium*,” implies that a Fellow of King’s College might be a person born of those who possessed real property to the annual value of 100 shillings and upwards. In fact, several instances of a Fellow vacating his Fellowship on succeeding to an Estate in Land are found in the College Annals; and shew that “the property qualification regarding land can be and is enforced.” In early times he who had not property in land, had not the same facility, as in the present day, of employing his capital for the purpose of obtaining an annual income. Even if he had money, it may be presumed that the possessor would have hoarded it, and from time to time have taken from the principal, till nothing was left for him. It may also be noticed, as evidencing in some degree the Founder’s supposition that the Members of King’s College might not be wholly without some private means, that though five marks are laid down, in words which imply an actual vested interest in possession to that amount, as the disqualification for the admission of a Scholar, the same Scholar, when once admitted, was not bound to resign, unless he became possessed of property to the amount in average years of one third more. No unimportant argument to the same effect may be drawn from the Founder’s express exclusion of “*nativi*,” i.e. of the lowest class of his time, from the Foundation at Eton; for admission at Eton must precede admission at King’s.

XXVII. The Provost and Scholars of King’s College support their views of the sort of Scholar con-

templated by an early Founder as the recipient of his bounty by the following passages in the Report of Her Majesty's Commissioners for the University of Oxford. "Doubtless Colleges were eleemosynary Foundations; but that sole object was not, like that of an Almshouse, to relieve indigence. They were intended, no doubt, to maintain Scholars, who were poor; and in an age, when learning was regarded as ignoble by the great, and, when nearly all but the great were poor, persons willing to enter the University as Students, could hardly be found, except among the poor. If in modern days those, who impart or seek Education in the Universities, are not indigent, it must not be thought, therefore, that the poor have been robbed of their birthright. Rather, the Universities, among other agencies, have so raised the condition of society, and mental cultivation is now so differently regarded, that persons intended for the learned Professions are at present found only among the comparatively wealthy. Such persons, if elected for their merit to Fellowships and Scholarships, would most faithfully fulfil the main objects of Founders, viz. the promotion of Religion and Learning." (*Oxford Report*, pp. 39, 40).

And, again,

"The Founder's object was to educate those who were statutably indigent.... But these Founders do not notice the case of a reversionary Estate, nor that of a recipient of their bounty being connected with the wealthy and powerful; for in their time more than in this, when settlements and provisions for younger

children are common, poverty might co-exist with gentle birth, and be allied to, and yet share no part with, opulence. In their time, 'except the Common Law, the only road to wealth and power open to a non-combatant, was the Church,' whose interests were the main object of those Founders." (*Oxford Report*, Mr. Dampier's Statement, p. 3.)

XXVIII. The Provost and Scholars of King's College believe that very rarely, if ever, and never knowingly, has a Scholar or Fellow been admitted, who was disqualified by Estate. Any Fellow who becomes eventually too rich in other property than land to retain his Fellowship, is expected as a matter of conscience to resign. It may be here affirmed that a Visitor's decision of any realised property of considerable amount vacating a Fellowship, would meet not only with obedience, of course, but with approbation. But Visitors have not hitherto so decided. On the contrary, Lord Eldon in the case of Queens' College before referred to observes, "as far as I know any thing of academical life, I can freely mention that *personal* estate has never been considered as qualifying or disqualifying on these occasions." Indeed, had Visitors so decided, still the difficulty of enquiry and of discovery would have left the matter, as now it is left, to the right feelings and conscience of the Fellow.

XXIX. But, though much might be said regarding a Founder's distinction between actual poverty and poverty in a Scholar or Clerk, seeking through the means of education to be qualified for those stations

or employments, which were formerly disregarded by knightly and baronial ignorance, and open to the educated, the early annals of King's College furnish the strongest, because a contemporaneous, exposition of the Founder's meaning. From them it appears that, in its infancy, as now, the College has been open to the poor Scholar, whether of low origin and of needy connexions, or of good birth and allied to, though not possessed of, wealth.

XXX. Thus Thomas Scot of Rotherham, one of the earliest of the Fellows, afterwards the re-Founder of Lincoln College, Oxford, Chancellor and Archbishop of York in the times of Edward IV. and Richard III., was the son of Sir Thomas Scot, Knight.

XXXI. William Coningsby, Fellow of the College in 1500, afterwards a Judge of the King's Bench, was the son of Sir Humphry Coningsby, Lord Chief Justice of the King's Bench, himself descended from an ancient knightly family.

XXXII. Cadets of the ancient and often knightly families of the Hollands of Lincolnshire, of the Hampdens of Buckinghamshire, of the Catesbys and Ishams of Northamptonshire, of the Wallops of Hampshire, of the Argentines of Cambridgeshire, of the Fitzherberts of Staffordshire, of the Tyrrells of Essex, of the Chaunceys of Hertfordshire, of the Cornwallises of Suffolk, and others mentioned in County Histories, and in the MSS. of Cole in the British Museum, were some elected Fellows in the time of the Founder, and all within fifty years of his decease.

XXXIII. The case of Sir Walter Haddon, Scholar in 1533, is not to be passed over. He was, according to his epitaph, "*Equestri loco natus*," and with two other Members of King's College, Coxe, Bishop of Ely, and Sir John Cheke, was Tutor of Edward VI., and Master of the Court of Requests in the reign of Queen Elizabeth; and, while so Master, he sent his son to King's College. As he was the most learned civilian and canonist of his time, he could not be ignorant of the meaning of the frequent phrase, "*Pauperes et indigentes Scholares*." And the above-mentioned list of early Fellows proves that, as the son of a knight, he duly enjoyed, and, as a father, through his son, he duly received, the advantages offered by Henry VI. Another instance of later date is in point. Charles Pratt, the son of Sir John Pratt, Chief Justice of the Court of King's Bench, himself afterwards Chief Justice of the Court of Common Pleas, and Lord Chancellor, was a Scholar of King's College in 1731. A late Member of the College has often heard Sir James Mansfield, also Chief Justice of the latter Court, and Lord Camden's junior at King's College by a few years, speak of the narrow circumstances, in early days, of this illustrious son of an eminent father. Other fit instances might be produced, continuing the practice and exposition to the present time.

XXXIV. In 1818 a Committee of the House of Commons appointed to enquire into the administration of Charities for Education, reported not on "the superiority in wealth and social position" of the Scholars of Eton College, but on the scanty and inade-

quate allowances made to them at that time by the College.

Not long afterwards the board and lodging of the Scholars on the Eton Foundation, as well by its insufficiency and discomfort, as by contrast with the habits of some hundreds of their schoolfellows, sons of noble and wealthy parents, drove away many even of the poor from the College; so that the Founder's great ultimate bounties at King's College were diverted, and their purpose thwarted, by an absence of economical reform at school.

XXXV. The Provost and Scholars of King's College conclude their observations upon this *first* particular by stating, that now and for several years, that reform having taken place, the number of candidates for the vacancies at Eton exceed tenfold the number of vacancies; and, they believe that although much attention is bestowed by the Electors on literary merit, the younger members of the College are recruited, as far as can be ascertained, only from classes deserving of the Founder's bounty. For they consider that where a parent's means for his son's education depend on the continuance of his life or health, he may with a good conscience seek and obtain that bounty; else the act of God, the failure of the parent's health or life, might cause a child to be left destitute, who just before had been rejected for his wealth; and the Provost and Scholars of King's College think this opinion is justified by the true meaning of the phrase, "*Pauperes et indigentes Scholares:*" and by the long practice expounding it.

XXXVI. The second class of "particulars" relates chiefly to the disregard of the course of instruction which is required by the Statutes.

It is agreed that in King's, as in every College, compulsory instruction ceases with the Degree of B.A. But this cessation results from the system of the University, to which all the Colleges are constitutionally subjected. Where any Founder makes his College a Member of the University, though he may take upon himself to regulate studies and times for the University Degrees, yet by necessary implication those rules of his must be subservient to the rules of the University.

XXXVII. The Provost and Scholars of King's College, in answer to Her Majesty's Commissioners' observations, regarding the instruction of their younger Scholars by other than actual Fellows of the Society, here reply, that

By their Statutes, the College (see *Documents, &c.*, Vol. II. p. 548,) might seek assistance from "extranei" for the instruction of Masters of Arts, who had been diverted to the study of Canon or Civil Law, if a competent instructor could not be found amongst the "intranei." The practice of instructing Masters of Arts as a necessary part of the University system has, as already observed, long ceased. But by a parity of reasoning an inference may be drawn from this part of the Statutes, that the College is permitted to use extraneous aid in the instruction of its Scholars, whenever circumstances render such a course necessary, or even politic. But the real answer is this, that Eton and

King's Colleges should be considered as portions of one system, and that the more distinguished Scholars of King's are generally taken off to the labours and profits of assisting in the education at Eton; where their success benefits the country at large, and promotes the advantages of King's College by an instruction of those from whom its future Scholars are to be chosen; and by an early settlement of themselves in life, and thence by creating a more frequent succession in the corporation of the College; that, in consequence therefore, of the absence of this class from King's College, and considering how little the number of Students would justify an excessive expenditure on tuition, it has become occasionally expedient to engage the partial services of eminent men from other Colleges. But the custom thus rendered advisable by circumstances is of very recent date. Until the year 1821 the Tutors of the Scholars of King's College had invariably been actual Fellows of the College. At that date, Mr Lonsdale, the present Bishop of Lichfield, and formerly a Fellow of the College, was appointed Tutor; and a few years afterwards, the office was again held by actual Fellows. Not until the year 1829 did the first instance occur of an extraneous Tutor being employed, in the person of Mr Isaacson of St John's. Nor has the precedent then introduced been uniformly followed. For Mr Rowland Williams, a Fellow of the College, held the appointment of Tutor from the year 1844 to 1850. The general success of the instruction given by the College is established by the testimony of Her Majesty's Commissioners to the academical distinctions obtained by Members



of the College in late years. (See *Cambridge Report*, p. 173.)

The Provost and Scholars of King's College contend that in this instance the Spirit, if not the Letter, of the Statutes has been regarded, by the endeavour to obtain eminently able Tutors from out the whole University.

XXXVIII. The Provost and Scholars of King's College propose to consider the three particulars relating to the Fellows "not being called upon in modern time to enter Holy Orders," or "to take degrees in Theology," or "to keep residence," under one head. For they conceive that the question regarding Holy Orders is the main subject on which the others depend, though the omission of residence, which probably originated in the imperfect state of the College Buildings, may also have been rendered by the exigencies of modern society a wholesome practice. It is admitted that Degrees in Medicine and in Civil and Canon Law, if the last mentioned Faculty can by law now exist, are not taken, though the College has hardly ever wanted able and learned Lawyers and Physicians amongst its Members.

XXXIX. It is clear that while the Founder's chief designs, as expressed in his Will, were the "encrease of virtues and dilatation of conning and stablishment of Christian faith," he contemplated as the necessary means of working out his designs, the institution of a College of Priests, who should be constantly occupied in the Services of the Church of Rome, especially in Prayers for himself in the College Chapel, and not elsewhere. It is clear also that the Laws touching the Reformed

Religion have virtually erased from the College Statutes all that relates to the Roman Ritual and Observances.

XL. It may be fairly submitted for consideration, whether the changes brought about by the Reformation are not greater than Her Majesty's Commissioners allow them to be; whether they have not done more than "sweep away several Chapters of the Statutes relating to the religious observances of the College:" (see *Cambridge Report*, p. 175 :) and whether they have not at King's College removed by implication the necessity of entering Holy Orders.

XLI. Where Ecclesiastical Duties remain attached to a Fellowship, or to any Office, Holy Orders are now as necessary as before the Reformation; but at King's College no Ecclesiastical Duty now remains, which a Fellow, simply as a Fellow, can perform. No Ecclesiastical Duty, except the maintenance by the College of the Church of England Services, is substituted by the Reformation for those daily primary and essential duties of performing Masses, and repeating Prayers for the dead, which it totally abolished. On the contrary there remain prescribed by the Statutes other Arts and Sciences, such as Law and Medicine, which the Fellows are bound to cultivate. But one effect of the Reformation has been to prohibit the Clergy from following any secular profession. Hence it has become necessary, either to abandon studies of primary importance prescribed by the Statutes, or else to relax the obligation to take Holy Orders. In adopting the latter alternative, the Provost and Scholars of King's College venture to contend, that so far from being chargeable with acting

in a spirit of disobedience to the Statutes, they are following, as far as possible, their express directions, and fulfilling the design of the Founder. Their practice turns upon one of the many distinctions between the Holy Orders of the Church before the Reformation and since.

XLII. The Fellow in Roman Orders had been in Orders from his early youth. His gradual entrance into Holy Orders was, therefore, though solemn, and seriously made, very different from the step taken by a man of full age at once into the Holy Orders of the Protestant Reformed Church of England. In the Church of Rome, no question is asked of, no declaration is made by, the Candidate, like that, which is asked of and answered by the Church of England Candidate, in these words:

“Do you trust that you are inwardly moved by the Holy Ghost to take upon you this Office and Ministration, to serve God for the promoting of his glory, and the edifying of his people?

*Answer.* I trust so.

Do you think that you are truly called according to the will of our Lord Jesus Christ, and the due order of this Realm, to the Ministry of the Church?

*Answer.* I think so.”

The Provost and Scholars of King's College cannot but deem it most important, especially in a place of Education, that worldly motives should not even seem to operate in dictating answers to such questions. For this reason it may even be thought a distinguishing advantage in King's College, that it does not force its

Members into the Clerical state on pain of deprivation. Let it be added, that the Founder's method of working out his design is now unlawful; that the Orders of the Church of England are so different as not even to be recognised by the Church of Rome; that the Fellow, if ordained, would at King's College have no necessary duty; that in practice, for centuries, Holy Orders have not been compulsory in the College; and it is thence argued that their necessity has been thought by the Visitor to have been removed by the Reformation; and that contemporaneous exposition confirms the argument.

**XLIII.** The Provost and Scholars of King's College submit that this broader view of the effect of the Reformation is not necessarily contrary to any decision of the Lord Chancellor acting as Visitor; nor to examples of compulsory Orders (which may have been of questionable result) in some other Colleges; for in those cases where the Statutes have been made since the Reformation, the words evidently intend the Holy Orders of the Reformed Church of England.

In several such cases the Fellows may hold Livings, which a Fellow of King's College cannot do.

**XLIV.** Granting, however, that cases of Statutes, like those of King's College, are to be produced, it might still be asked, whether the above mentioned most remarkable difference between the Ordination Services of the two Churches had been noticed: and whether a scarcity of Clergymen in times of persecution might not have been a motive operating too strongly with Visitors? Whatever the answer, it is clear that the Visitor of each

College has an independent ultimate decision. It may be inferred from the long practice at King's College that its early Visitors entertained the views now advanced; in which all since have acquiesced, and held that the moral impediment of disinclination and inability to answer those questions of the Ordination Service truly, is far more legitimate than any bodily impediment referred to or alluded to in the Statutes. (See *Documents*, &c. Vol. II. p. 486, and p. 549.)

XLV. The Provost and Scholars of King's College submit that it would not be wise to construe their Statutes with a strictness unprecedented for centuries, at a time when Her Majesty's Commissioners are proposing to relax in this very particular the Statutes of Colleges in the sister University. The Oxford Commissioners thus express themselves at p. 163 of their *Report*;

"As regards those who are induced to take upon them the Vows of the Christian Ministry solely or mainly because of the loss which a refusal to do so would involve, the effects of such an obligation are manifestly evil, and the removal of this obligation would be the removal of a scandal from the University and the Church. We are of opinion that this reason is of itself sufficient to justify an enactment relieving Fellows of Colleges from the necessity of taking Holy Orders."

The Provost and Scholars of King's College refer much of the learning and ability of the Members of the College in Church and State, of which Her Majesty's Commissioners make honorable mention (see *Camb. Rep.* p. 173), to a practice which has given its Laymen

to the World, and retained only the willing in the Church. But their argument rests mainly on the propriety of withdrawing, as far as possible, from the mind of a Candidate for Holy Orders all motives of a compulsory kind.

XLVI. Regarding Degrees in Theology, what has just been said of Holy Orders, is insisted on. To compel these Degrees is to compel Holy Orders, and to effect indirectly that which it is not thought right to do directly. If it be true that Visitors, considering the effect of the Reformation, have by tacit acquiescence decided in the case of King's College that entrance into Holy Orders is not compulsory, and decreed that moral coercion and secular temptation shall not sway in such a case, these improper influences operate equally, whether the retaining a Fellowship depends upon the entrance into Holy Orders, or taking Degrees, which require that the Candidates for them shall have previously entered into Holy Orders. Here also there is a long and contemporaneous exposition; for in truth the practice of not entering into Holy Orders is a practice of not taking Theological Degrees.

XLVII. Regarding the necessity of residence: The Provost and Scholars of King's College, in addition to their representations concerning the State of the Collegiate Buildings, say, that one material reason for residence appears in the Statutes to depend on the Services and processions of the Roman Catholic Church. All the Fellows, Priests, could collectively officiate at the High Altar, while each could separately and simultaneously or successively perform Masses in the numerous Side-

Chapels. A cause having ceased, the effect, residence, *pro tanto*, ceases. In this particular case there is an universal similar practice in every College of both Universities. It is here asked, whether this remarkable coincidence of the non-observance of early Statutes in this point can be a common error, or whether it is not rather an exposition of the effect of laws introduced since those Statutes, and abrogating material reasons for residence; and, whether the Visitor's sanction of non-residence, even if it could be disputed, (see *Camb. Report*, p. 176) especially within the College, be not given by good authority? That such practice of non-residence is no recent innovation appears, amongst many other proofs, from the statement of Lord Camden on the case of *Hayes v. Long*, 2 Wilson, 311: "Great numbers of persons remain on the books long after they have left the University on purpose to vote for Members. Many who are Fellows of Colleges never go thither at all. I myself was one a long time, and never went there at all."

XLVIII. The arguments above employed in reference to Holy Orders and non-residence include, if taken together, all that need be said on the payment of Fellows for doing clerical duty out of College. For the Founder (see *Documents*, &c. Vol. II. p. 550,) permits payment for the celebration of masses in the chapel, and only forbids it for the like celebration elsewhere. But, if it is now desirable for Fellows, having no clerical duty in College, to become Clergymen, it must in reason be permissible for them to undertake parochial duty, and by analogy to receive payment for it. The advantages of such a prac-

tice, whether morally to the Fellows so employed, or to the parishes, which thus enjoy an indirect endowment from the Fellowships, are too obvious to be dwelt upon.

XLIX. As regards the change in the number of Chaplains, the best general explanation will be found in a due consideration of the nature of the Ritual of the Church of Rome, and in the effects of the Reformation, both in altering that Ritual, (see *above*, XXXIX—XLII.) and in lessening the need of a numerous staff for the celebration of Divine Service. But it should be added that the diminution of the Chaplains has been partly compensated by an extra-statutable increase in the number of the Choir.

L. To the 8th particular of non-observances, the Provost and Scholars of King's College, if what is said of the rules of interpretation and the defect of buildings and revenues be not sufficient, observe that the lapse of time with its effects has necessarily silenced the words of many "minute details," and has left their spirit only to be obeyed. There exist, however, throughout their Statutes many most important directions, of which a real observance could hardly be obtained from the unwilling by human enforcements; directions which touch the secret conscience only, and are left to that by being left to human discretion and judgment. As regards these the Provost and Scholars of King's College feel warranted in observing generally, that they have attempted to act up to the spirit of their Statutes; and in corroboration, they may mention the gratifying testi-



mony of Her Majesty's Commissioners not only to the great and early eminence of the College, but to the "Academical distinctions of the last few years." (See *Camb. Report*, p. 173). A reform in the Examinations at Eton both of the Scholars to be admitted to Eton, and of those to be elected to King's College, was first actively sought by some members of King's College between thirty and forty years back, and eventually secured on the accession of the late Provost of Eton, while the literary character of the School was promoted by the exertions of the then Head Master, Dr Hawtrey, now Provost of Eton.

In the mean time the Society of King's College from their own Funds, and from benefactions of former members, had at an expense of about £100,000 almost built the habitable parts of their College, and had entirely removed the Scholars from the Old Buildings erected in the time of the Founder; and thus the probationary state of the Scholars became more directly subjected to the cognizance of the Authorities of the College; a cognizance which has in more than one instance resulted in the denial of a Fellowship, and has been in other cases beneficial, by tending to secure moral conduct, and a stricter observance of discipline.

LI. At Eton, however, as has already been observed, the insufficiency of the Board, and the discomfort in the Lodging of the Scholars there, placed the Scholars in so inferior a position when contrasted with that of the Oppidans, as greatly to obstruct the good likely to arise from the improved and improving sys-

tem of the Election Examinations. But on the accession of the late Provost of Eton in 1840, he and his Fellows, assisted by Royal bounty and by the liberality of old Etonians, and at their own considerable expense and inconvenience, erected new Buildings for the Scholars' Lodging, suited to the habits and manners of modern times. They also improved the arrangements of the Hall Table. Hence the Candidates for Vacancies at once greatly increased in number, and from being, as before, fewer than the Vacancies, are now usually in a tenfold excess of them. Thus the benefits of the Founder are again extended, and the Examinations, by which merit is tested and promoted, have their due effect not only amongst the increased numbers at Eton, but also as regards the standard of attainment at King's College, to which Her Majesty's Commissioners bear testimony in a short but emphatic sentence, the more valuable from the station and characters of its Authors. (See *Camb. Rep.* p. 173.)

LII. If any fuller detail be desired of the results of the exertions of the two Colleges, and of individual Members, it will be found in the following Table, the outline of which is extracted from the University Calendar. The comparison here commences with the year 1835, the period about which the Election Examinations at Eton began to exercise a growing influence, and terminates in 1850, the year in which Her Majesty's Commission was issued. The number of Academical Prizes open to the Undergraduates of the Colleges mentioned is given, as well as the number obtained by each.

	Trin.	S. Joh.	Pemb.	S. Pet.	Clare.	Cains.	King's.
University Scholarships.	Craven.	8	0	1	0	0	5
	Battie.	1	0	0	0	0	1
	Davies.	1	0	0	0	0	1
	Pitt.	2	1	0	0	0	0
Composition Prizes.	The Chancellor's English Poem.	5	4	1	2	0	1
	Sir Wm. Browne's Medals.	23	3	6	0	2	8
	Camden Medal.	1	1	1	0	0	7
	Porson Prize.	5	4	1	2	0	1
	Members' Prize.	16	2	0	0	0	0
TOTAL.		62	15	10	4	2	24
Average Annual Number of Under-graduates for 16 years, from 1835 to 1850 inclusive.		473	299	36	63	46	12

LIII. It is admitted that, though the above table justifies the testimony of Her Majesty's Commissioners, and proves that the exertions of the College have not been vain, hitherto the Studies of its Undergraduates

have been mainly directed to Classics and Theology, while at other Colleges application to Mathematics is severely required. A surrender, however, has been made of an unwise indulgence rather than a privilege, that of not being subject to an University Examination for the Degree of B.A.; and, though made since the issuing of Her Majesty's Commission, this surrender is the result of many years controversy and appeals in the College; and was obtained immediately on the Election of the present Provost. Its first fruits have been already gathered. May it be followed by further consequences of good to the College, equalling those which have been above enumerated.

LIV. The Provost and Scholars of King's College trust that they have thus shewn that they do, according to the rules of legal interpretation already mentioned, obey the Statutes, at least such as the law has not annulled, especially those important parts of them which relate to the eleemosynary character of the College, and to its fundamental purposes of sound learning and religious education. They know that their Statute Book is constantly appealed to as a living law, is annually read through by the Scholars, and is recognised as governing the procedure of the College in many familiar details, as well as in its more important transactions. Deviations from the Letter are at least not gratuitous, and have been shewn to fall within the range of equitable interpretation, with either express or tacit sanction from the Visitor.

LV. The Provost and Scholars of King's College

are not blind to the desirability of extending the usefulness of the College, and introducing, by authorized Interpretation or Legislative enactment, such modifications of their system, as would correspond to the changes wrought by four centuries of progress in society at large. And in the event of their being duly authorised, they would be disposed to give such information as ought to precede any legislative change, and to concur in any well-considered modification within the apparent range of their Founder's design.

LVI. In conclusion, the Provost and Scholars of King's College feel that their Statutes lay upon them the duty of deprecating any such change, as would contravene the Founder's design, by lessening the usefulness of the College as subsidiary to the Church of England, or by severing its connexion with the sister Foundation of Eton, or by any diversion of Collegiate property which would involve the principle of confiscation. They also feel a difficulty arising from their oaths as regards the proposal of even salutary changes; but they are prepared, under Legislative sanction, to enter into a consideration of the advantages, which might arise from such an extension of their educational area, as their Royal Founder would be likely to direct, if he were now alive. They also think that the whole case of their College should be considered in the closest connexion with that of Eton.

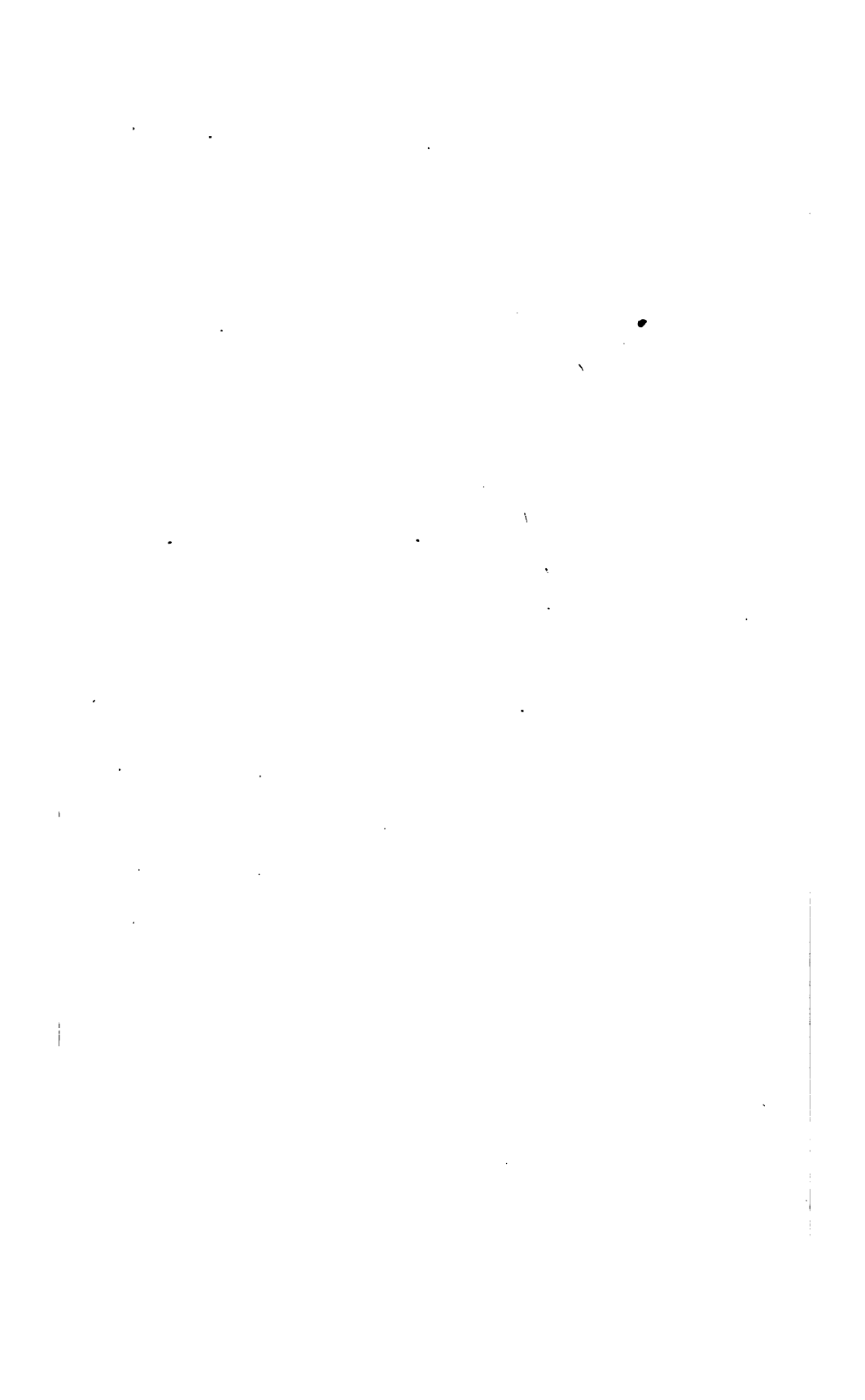
LVII. Whenever any Legislative enactment shall introduce change, the Provost and Scholars of King's College trust it may be of such a nature, that they may

recognise the justice, as well as submit to the necessity, of obeying it.

They are disposed to think and believe that the successors of so many eminent men in every branch of science and learning, the successors of "Croke," "*qui primus literas invexit ad nos Græcas*;" of "Oughtred," who introduced into this University the study of Mathematics; the successors of Divines, from Bishop Pearson to Archbishop Sumner; of Lawyers, from Lord Camden to Sir John Patteson; of Statesmen, from Sir Robert Walpole to Lord Stratford de Redcliffe: that the successors of such men are not likely to oppose what is law, nor discourage the pursuits of literature and science, nor desert those principles, ecclesiastical as well as civil, which were vindicated by the Reformation, and maintained by the successful efforts made for securing the Accession of the House of Hanover.

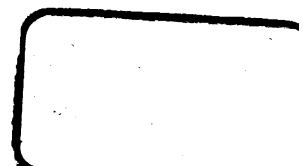
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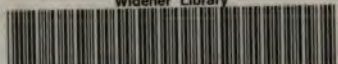








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